RECENT IMPORTANT DECISIONS

BANKRUPTCY—JURISDICTION—APPOINTMENT OF REFEREE.—While the United States judge for the northern district of Alabama was holding court in the eastern division of that district, JONES, J., of the middle district of the same state, while presiding over court there, left the bench and took a hurried trip to Birmingham, in the northern district. He stayed there long enough to purport to open a court of bankruptcy and appoint one B. as referee without the knowledge or consent of the presiding judge in the district. S., the then referee, petitioned the court to have this appointment set aside as void. *Held,* that under the bankruptcy act the power to appoint referees is given to the court, and not to the judge as an individual, and, the judge holding court in the middle district could not assume to act as a court in two jurisdictions, therefore his appointment of B. was void. *In re Steele* (1908), — D. Ct., N. D., Ala., S. D. —, 161 Fed. 886.

A court is a tribunal organized according to law, and sitting at fixed times and places for the administration of justice, not an individual holding a judicial office. § 2 of the Bankruptcy Act of 1898 provides (1) that there shall be one court of bankruptcy in each judicial district of the United States, composed of the district courts therein; (2) these courts of bankruptcy are vested with jurisdiction at law and equity within their territorial limits only. § 1, subdivision 7, prescribes that "court" shall mean court of bankruptcy in which proceedings are pending. A judge alone does not constitute a court. Proceedings at another time or in another manner than specified by law, though in the presence of the judge, are *coram non judice* and void. *Ex parte Gardner,* 22 Nev. 280. Proceedings of a kind and at a place other than prescribed by law are void. *Johnston* v. *Hunter,* 50 W. Va. 56. From the opinion in the case it appears that the judge making the appointment had not held court a single day in the northern district in the course of a year, and had been in that district only long enough to make the above appointment.

CARRIERS—LIABILITY FOR BAGGAGE—PROXIMATE CAUSE.—Defendant by a clause in its ticket sold to plaintiff exempted itself from liability for loss of baggage caused by fire. Plaintiff's baggage was held in a warehouse, in transit, for nine days, when it was destroyed by fire. *Held,* plaintiff could not recover. *French* v. *Merchants' & Miners' Transp. Co.* (1908), — Mass. —, 85 N. E. 424.

The exemption clause was held to be operative only if loss occur without any negligence of the carrier, because it would be invalid if construed to exempt the carrier from the results of his own negligence. Further, that while the carrier was negligent, the fire, and not the negligence, was the proximate cause of the loss. This case follows the line of decisions in Massachusetts and many other states, as well as of the federal courts. *Railroad Co.* v. *Reeves,* 10 Wall. 176; *Scott et al.* v. *Baltimore, etc., Steamboat Co.,* 19 Fed. 56; *Thomas et al.* v. *Lancaster Mills, etc.,* 71 Fed. 481; *Hoadley* v. *Northern, etc., Co.,* 115

Mass. 304; *Denny* v. *N. Y. Cent. R. R. Co.*, 13 Gray 481; *Morrison* v. *Davis*, 20 Pa. St. 171; *McClary* v. *Sioux City, etc., R. R. Co.*, 3 Neb. 44; *Mich. Cent. R. R. Co.* v. *Burrows*, 33 Mich. 6; *Daniels* v. *Ballantine*, 23 Ohio St. 532; *Extinguisher Co.* v. *Railroad*, 137 N. C. 278. The cases supporting this view are decided upon the theory that delay in transportation is but the remote cause of the loss; that it is not such as in the natural course of events might have been anticipated. Goods placed in a warehouse are ordinarily secure, and it is not to be anticipated that because they are delayed there that they will be destroyed by fire. It has been said that to hold the carrier there must have been such a delay as to amount to a deviation. *Scott et al.* v. *Baltimore, etc., Steamboat Co.*, supra. While the principal case is sustained by the weight of authority, a contrary ruling is endorsed in well reasoned cases. *Michaels* v. *N. Y. Cent. R. R. Co.*, 30 N. Y. 564; *Read* v. *Spaulding*, Id. 630; *Condict* v. *Grand Trunk Ry. Co.*, 54 N. Y. 500; *McGraw* v. *Baltimore, etc., R. R.*, 18 W. Va. 361; *Michigan, etc., R. R. Co.*, v. *Curtis*, 80 Ill. 324; *Davis* v. *Wabash, etc., R. R.*, 89 Mo. 34; *Ala. Gt. So. R. Co.* v. *Quarles & Couturie*, 145 Ala. 436, 40 South. 120; *Ala. Gt. So. R. Co.* v. *Elliott & Son* (Ala.), 43 South. 738; *Bibb Broom Corn Co.* v. *Atchison, T. & S. F. Ry. Co.*, 94 Minn. 269; *Wald* v. *Pittsburgh, etc., R. R. Co.*, 162 Ill. 545; *Southern Exp. Co.* v. *Womack*, 1 Heisk. (Tenn.) 256. A common carrier is bound to deliver goods within a reasonable time. *Condict* v. *Grand Trunk Ry. Co.*, 54 N. Y. 500; *Wilbert* v. *N. Y. & Erie Ry. Co.*, 12 N. Y. 245; though not an insurer as to time. *Peet* v. *Ry. Co.*, 20 Wis. 624. Where the negligence of the carrier concurs with an excepted risk, and is one of the causes in a direct sequence producing the loss, the carrier is said to be liable. *Parsons* v. *Hardy*, 14 Wend. 215. Had the baggage, in the principal case, proceeded without negligent delay, it would not have been subjected to the fire. The Alabama court holds the carrier liable in such cases on the ground that its negligent delay continues to be an active cause. *Ala. Gt. So. R. Co.* v. *Elliott & Son*, supra. In these cases it is held to be a condition precedent to its exoneration that the carrier be free from fault, that negligence breaks the carrier's line of defense. Under this theory the carrier becomes an insurer, from the moment of delay, as to extraordinary as well as to ordinary causes.

CONSTITUTIONAL LAW—IMPAIRING OBLIGATION OF CONTRACT.—A city had given a street railway company the right to the use of the streets for fifty years, and the ordinance provided that the rate of fare was not to exceed five cents for each passenger carried. The city council later passed an ordinance seeking to compel the company to issue transfers, and the company applies for an injunction to restrain the execution of this ordinance. *Held*, that the original ordinance constituted a contract, which the later ordinance impaired, and the injunction should issue. *Shreveport Traction Co.* v. *City of Shreveport et al.* (1908), — La. —, 47 South. 40.

The construction which the courts have placed upon the word contract as used in Art. 1, Sec. 10, of the Constitution, has furnished interesting cases.